

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

TECHNICAL ANALYSIS

**Proposed Administrative Civil Liability
Contained in Complaint No. R9-2003-0162
Ryland Homes of California, Inc.
Serenada Development
Riverside County**

**Noncompliance with
California Water Code §§ 13267, 13376, and 13383
and
Order No. 99-08-DWQ
National Pollutant Discharge Elimination System (NPDES)
General Permit for
Storm Water Discharges Associated With
Construction Activity (General Permit)**

June 5, 2003

**by
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Compliance Assurance Unit**

1. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence supporting administrative assessment of civil liability in the amount of **\$158,350** against Ryland Homes of California, Inc. (Ryland Homes) pursuant to California Water Code (CWC) section 13385 for violations of CWC sections 13267, 13376, and 13383, and California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction Activity (General Permit)* as alleged in Complaint No. R9-2003-0162. See *Exhibit 1, Complaint No. R9-2003-0162*.

2. ALLEGATIONS

The following allegations against Ryland Homes are the basis for assessing administrative civil liability pursuant to CWC section 13385, and also appear in Complaint No. R9-2003-0162.

2.1. **Ryland Homes Discharged Sediment to a MS4 and “Waters of the United States”¹ in Violation of CWC § 13376 and Construction Storm Water Permit § A.2.**

Ryland Homes discharged sediment to a Municipal Separate Storm Sewer System (MS4) and waters of the nation without submitting a report of waste discharge in violation of CWC section 13376 and in violation of Order No. 99-08-DWQ section A.2. Sediment was discharged from Ryland Homes’ Serenada construction site to Murrieta Creek via the City of Murrieta’s MS4 on at least four days: January 28, 2003, February 11, 2003, February 13, 2003, and February 28, 2003.

2.2. **Ryland Homes Failed to Implement a Storm Water Pollution Prevention Plan in Violation of Construction Storm Water Permit § C.2.**

Ryland Homes failed to implement its Storm Water Pollution Prevention Plan (SWPPP)² by failing to implement and or maintain adequate Best Management Practices (BMPs)³ in violation of Order No. 99-08-DWQ section C.2 on at least 68 days: October 28, 2002; December 17, 2002; January 2, 2003; January 9, 2003; January 17, 2003; February 11, 2003; February 13, 2003; February 14, 2003; February 21, 2003; and February 28, 2003 through April 15, 2003.

¹ “Waters of the United States” is defined at 40 CFR § 122.2.

² A SWPPP “specifies Best Management Practices (BMPs) that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving off site into receiving waters.” (Construction Storm Water Permit, Fact Sheet, page 1) See also page 6 of the Fact Sheet for greater SWPPP details.

³ BMPs “means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.” (40 CFR § 122.2)

2.3. Ryland Homes Failed to File a Notice of Intent in Violation of CWC § C.1, and 40 Code of Federal Regulations Parts 122, 123, and 124

Ryland Homes failed to file a Notice of Intent (NOI) for coverage under Order No. 99-08-DWQ, prior to the commencement of construction activity at the Serenada construction site on September 1, 2002 as required by CWC section 13376, Order No. 99-08-DWQ section C.1, and 40 Code of Federal Regulations (CFR) Parts 122, 123, and 124. The State Board received a NOI for the Serenada site (WDID No. 9 33S320505) on March 11, 2003, 191 days late. See *Exhibit 2, NOI*.

2.4. Ryland Homes Failed to Submit a Technical Report in Violation of CWC §§ 13267 and 13383

Ryland Homes failed to submit an adequate technical report on March 28, 2003 as required by the Regional Board pursuant to CWC sections 13267 and 13383. An adequate technical report has not been received by the Regional Board as of the date of this Technical Analysis, 68 days late and counting.

3. BACKGROUND

On November 16, 1990 the US Environmental Protection Agency (USEPA) issued regulations for storm water discharges (40 CFR Parts 122, 123, and 124). The regulations require operators of specific categories of facilities where discharges of storm water associated with *industrial activity*⁴ occur to obtain a National Pollutant Discharge Elimination System (NPDES) permit and to implement Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology (BAT/BCT)⁵ to eliminate industrial storm water pollution. The State Board adopted *Order No. 99-08-DWQ, NPDES General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* (Construction Storm Water Permit) on August 19, 1999.

The current Construction Storm Water Permit replaced the initial permit adopted in 1992 by the State Board to implement the federal regulations. The Construction Storm Water Permit authorizes the discharge of storm water associated with construction activity. Construction activity is subject to the Construction Storm Water Permit, if there is clearing, grading, or disturbances to the ground (such as stockpiling or excavation) that results in soil disturbances of one acre or more of total land area. Property owners or developers engaged in construction activity subject to the Construction Storm Water Permit must file a Notice of Intent (NOI) with the State Board and prepare a site specific Storm Water Pollution Prevention Plan (SWPPP) prior to the start of construction activity.

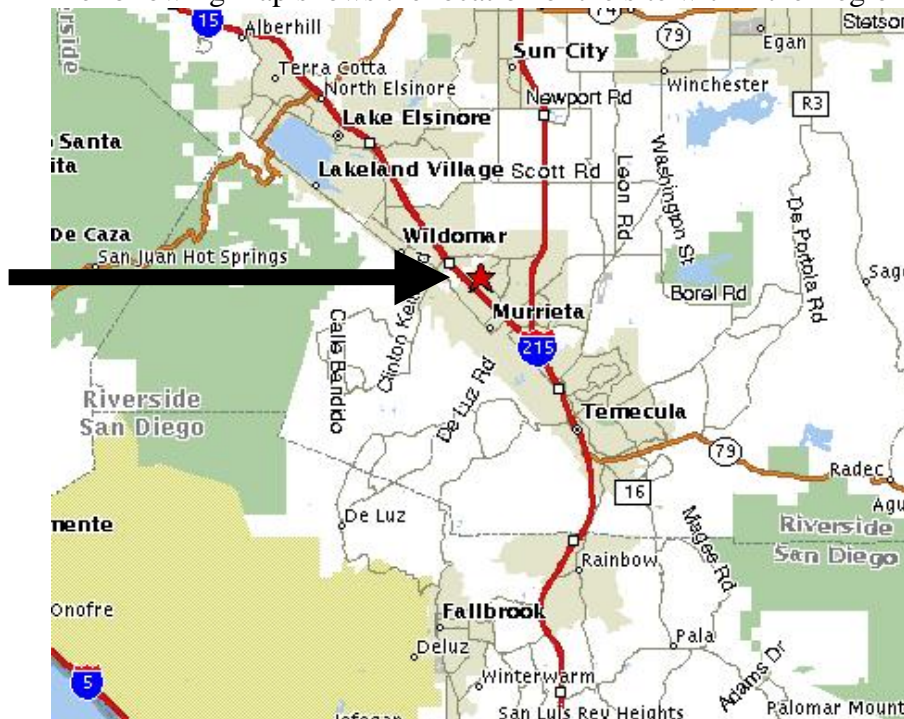
⁴ Construction activity falls under the federal definition of “industrial activity.” See 40 CFR 122.26(b)(14)(x).

⁵ BAT/BCT as defined in sections 301 and 402 of the federal Clean Water Act.

Ryland Homes obtained ownership to the Serenada site (vicinity of Nutmeg Street and Jackson Avenue, Murrieta, California) from Ashbrook Development Co. Inc. (Ashbrook) on September 3, 2002. The Serenada Development is just one of approximately 300 communities currently being developed by Ryland Homes across the nation. Ryland Homes is one of the nation's largest homebuilders and a leading mortgage-finance company. Ryland Homes has been building homes for over three decades and prides itself as "America's Home Builder," backed by financial strength and coast to coast resources. The Ryland Homes family of companies (The Ryland Group, Inc., NYSE ticker symbol RYL) handles all aspects of the home buying process (design, construction, sales, mortgage financing, title, escrow, and insurance services).

In May 2002, Ashbrook began rough grading the site and completed rough grading prior to the transfer of ownership to Ryland Homes. According to Ryland Homes' NOI, it began construction activity on the 73.1 acre Serenada site on September 1, 2002. Approximately 64 two story single family detached homes will be constructed. The first phase was released for sale on April 26, 2003. Prices for the homes, which range in size from 3,040 to 3,731 square feet, are from \$332,990 to \$383,990.

The following map shows the location of the site within the Region.



4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Pursuant to CWC section 13385 (a),

Any person who violates any of the following shall be liable civilly in accordance with this section:

1. Section 13375 or 13376.
2. Any waste discharge requirements or dredged and fill material permit.
3. Any requirements established pursuant to Section 13383.

Furthermore, CWC section 13385 (c) provides that

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

California Water Code section 13385(e) requires the Regional Board to consider several factors when determining the amount of civil liability to impose. These factors include: "...the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

4.1. Discharge of Sediment to a MS4 and Waters of the United States

Ryland Homes discharged sediment to a Municipal Separate Storm Sewer System (MS4) and waters of the United States without submitting a report of waste discharge in violation of CWC section 13376 and in violation of State Board Order No. 99-08-DWQ section A.2. Sediment was discharged from the Serenada site to Murrieta Creek via the City of Murrieta's MS4 on at least four days: January 28, 2003, February 11, 2003, February 13, 2003, and February 28, 2003.

4.1.1. Nature, Circumstances, Extent, and Gravity of the Violation

On January 28, 2003, Jay Kalan, City of Murrieta Construction Inspector, observed a Ryland Homes subcontractor pumping sediment laden water from a sedimentation basin into a concrete v-ditch connected to the City of Murrieta's storm water conveyance system. There was no attempt to filter

or remove sediment from the discharge. See *Exhibit 3, City of Murrieta Inspector's Log, January 28, 2003*; and see *Exhibit 4, Digital photographs taken by Jay Kalan on January 28, 2003 labeled MVC-016S.JPG and MVC-017S.JPG*.



MVC-016S.JPG



MVC-017S.JPG

Photographs taken by Jay Kalan, City of Murrieta, on January 28, 2003 at Ryland Homes' Serenada development, displaying the pumping of a sedimentation basin into a concrete v-ditch connected to the City of Murrieta's storm water conveyance system.

On February 11, 2003, Jay Kalan, City of Murrieta Construction Inspector, observed "a major amount of silt leaving [the] site on Jackson [Avenue]" and entering into a City of Murrieta storm drain inlet. There was no attempt to filter or remove sediment from the discharge. See *Exhibit 5, City of Murrieta Inspector's Log, February 11, 2003*; and see *Exhibit 6, Digital photographs taken by Jay Kalan on February 11, 2003 labeled MVC-023S.JPG and MVC-024S.JPG*.



MVC-023S.JPG



MVC-024S.JPG

Photographs taken by Jay Kalan, City of Murrieta, on February 11, 2003 at Ryland Homes' Serenada development, displaying sediment laden storm water discharging into Jackson Avenue storm drain inlet.

On February 13, 2003, Megan Fisher and Deborah Woodward, Regional Board observed sediment laden water from the Serenada site overwhelming gravel bags and discharging into the Jackson Avenue storm drain inlet. See *Exhibit 7, Regional Board Inspection Report with photographs, February 13, 2003.*



Photograph taken by Deborah Woodward, Regional Board, on February 13, 2003 at Ryland Homes' Serenada development, displaying sediment laden storm water runoff flowing into the Jackson Avenue storm drain inlet.

On February 28, 2003, Eric Becker, Regional Board observed the discharge of sediment laden water to a v-ditch that flows into the channel that flows under Nutmeg Street. The Sediment laden water was pumped from a sedimentation basin without any filtration devices. See *Exhibit 8, Regional Board Inspection Report with photographs, February 28, 2003.*



Photograph taken by Eric Becker, Regional Board, on February 28, 2003 at Ryland Homes' Serenada development, displaying the discharge of sediment laden water from a sedimentation basin into a concrete v-ditch that discharges into the channel that flows under Nutmeg Street.

Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna. Suspended sediment can reduce photosynthesis in and survival of aquatic flora by limiting the transmittance of light. The Water Quality Control Plan for the San Diego Basin (9) (Basin Plan), contains a water quality object for sediment which concludes that the suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses. The Serenada construction site lies within the Murrieta Hydrologic Subarea (HSA), which has the following beneficial uses:

- a. Municipal and Domestic Supply (MUN)
- b. Agricultural Supply (AGR)
- c. Industrial Service Supply (IND)
- d. Industrial Process Supply (PROC)
- e. Contact Water Recreation (REC-1)
- f. Non-Contact Water Recreation (REC-2)
- g. Warm Freshwater Habitat (WARM)
- h. Wildlife Habitat (WILD)

4.1.2. Discharge's Susceptibility to Cleanup and Abatement, and Degree of Toxicity

Cleanup and abatement activities could result in significant temporary impacts to the riparian corridor as a result of cleanup activities. These impacts should be weighed against the benefits of cleanup. There is little possibility of cleaning up the sediment discharged from the site. In this case, sediment has been dispersed throughout the downstream reaches of the creek as a result of subsequent storm events. Therefore it is virtually impossible to cleanup and abate the sediment discharged from the site to Murrieta Creek. There have been six storms of 0.2 inches or greater since the last documented sediment discharge of February 28, 2003.

As stated above, sediment is a pollutant that can have substantial biological, chemical, and physical effects on receiving waters. These include (1) increased turbidity (loss of clarity) and resulting decreased light transmittance, biological productivity, and aesthetic value; and (2) physical suffocation of bottom dwelling (benthic) organisms. Sediment can also physically clog gills causing fish mortality; reduce reproduction; impair commercial and recreational fishing resources; increase water temperature, and fill in lagoons and wetlands converting them from aquatic to terrestrial habitat. It should be noted that these water quality impacts occur both during sediment transport and sediment deposition. In addition to the problems associated with "clean" sediment, sediment is

also an excellent transport mechanism for toxics (i.e., metals and synthetic organics) which bind to sediment particles.

4.1.3. Discharger's Ability to Pay and Ability to Continue Its Business

According to CNN/money "[t]he Ryland Group, Inc. finished the first quarter of 2003 in a strong financial position with cash and cash equivalents of \$164.2 million and no borrowings outstanding against its \$300 million revolving credit facility." Ryland Homes is a subsidiary of the Ryland Group, Inc. CNN/money further reported that "[g]ross profit margins from home sales averaged 20.8 percent in the first quarter of 2003, an increase of 100 basis points over the first quarter of 2002." Using the average gross profit margin, the Serenada development will gross a profit of approximately \$4.8 million. Therefore, Ryland Homes could easily pay the recommended liability and in fact could even pay the potential maximum liability for the violations alleged here and continue to operate as a business.

4.1.4. Degree of Culpability and Voluntary Cleanup Efforts

No cleanup efforts have been undertaken by Ryland Homes to reclaim sediment after it was discharged into the City of Murrieta's MS4 or Murrieta Creek. The Regional Board inspected the Serenada site four times and the City of Murrieta inspected the site at least 18 times. The Regional Board issued two Notice of Violations (NOVs) to Ryland Homes for the Serenada site, and the City of Murrieta issued at least four Correction Notices.

The first NOV was issued on March 11, 2003 for failing to file a NOI, failing to prevent the discharge of sediment on February 28, 2003, and failing to implement BMPs. On April 8, 2003, the Regional Board issued Ryland Homes their second NOV for failing to submit an adequate technical report, and failing to implement BMPs. The two NOVs were sent certified mail to Ryland Homes, and each NOV informed Ryland Homes that their violations were subject to assessment of administrative civil liability. Furthermore, the Regional Board and the City of Murrieta provided compliance assistance to Ryland Homes personnel in the field in an effort to rectify the violations and ensure that the developer understood the nature and extent of the violations. For example, Eric Becker, Regional Board called Charlie Weeks, General Office Superintendent, Ryland Homes on March 6, 2003 and discussed Ryland Homes' failure to prevent sediment discharges, failure to implement adequate BMPs, and failure to file for a NOI.

Ryland Homes' culpability is high given the long-standing violations and efforts by the regulatory agencies. Ryland Homes' actions are considered intentional or at the very least consistently negligent conduct.

4.1.5. Prior History of Violations

Ryland Homes' Highpointe development discharged sediment into the storm water conveyance system on December 29, 2000 and March 5, 2001. The Highpointe development is less than two miles from the Serenada site. The Regional Board issued a NOV to Ryland Homes on March 8, 2003 for failing to file a NOI, failing to implement/maintain BMPs, failing to implement its SWPPP, and failing to prohibit illicit/illegal discharges.

On November 1, 2002, Eric Becker, Regional Board observed plaster laden washwater being discharged from Ryland Homes' Belleza development in San Marcos, to the storm water conveyance system. A NOV was issued to Ryland Homes on November 7, 2002 for failing to file a NOI, failing to implement BMPs, and failing to prohibit illicit/illegal discharges.

4.1.6. Economic Benefit or Savings

Pursuant to the State Board's *Guidance to Implement the Water Quality Enforcement Policy*, assessments should at a minimum take away whatever economic savings a discharger gains as a result of those violations. Compliance with the Construction Storm Water Permit has associated costs and developers that are currently in compliance are at an economic disadvantage compared to developers that are not. These costs include: annual permit fee, SWPPP development, SWPPP implementation, and compliance monitoring and reporting.

The discharge of sediment to waters of the United States resulted from Ryland Homes' failure to implement adequate BMPs. Adequate BMPs consist of both erosion and sediment control to eliminate or dramatically reduce the movement of sediment from graded areas. Three of the four discharges resulted from the failure to properly pump out sedimentation basins. Observations from both the Regional Board and the City of Murrieta indicated that sediment discharges were the result of inadequate erosion control BMPs, such that sediment control BMPs were overwhelmed. The Regional Board has estimated that adequate sediment and erosion control BMPs cost roughly \$2,000 per acre per year. At 73 acres, the cost associated with the implementation of adequate BMPs is estimated to be \$146,000. Furthermore, the lack of and inadequacy of BMPs at the Serenada site are indicative of the lack of or inadequacy of Ryland Homes' SWPPP for the site. The development of a SWPPP for a

site the size of Serenada is approximately \$12,000. Although Ryland Homes failed to apply BMPs to the entire site, clearly it did expend some resources on BMPs.

4.1.7. Other Matters That Justice May Require

Over the course of trying to resolve this matter with Ryland Homes, the Regional Board invested an estimated 230 hours to investigate, prepare enforcement documents, and consider action. At an average rate of \$80 per hour, the total investment of the Regional Board is \$18,400.

4.2. Failure to Implement Storm Water Pollution Prevention Plan

Ryland Homes failed to implement its SWPPP by failing to implement and or maintain adequate BMPs in violation of State Board Order No. 99-08-DWQ section C.2 on at least 68 days: October 28, 2002; December 17, 2002; January 2, 2003; January 9, 2003; January 17, 2003; February 11, 2003; February 13, 2003; February 14, 2003; February 21, 2003; and February 28, 2003 through April 15, 2003.

4.2.1. Nature, Circumstances, Extent, and Gravity of the Violation

The Construction Storm Water Permit requires the development of a storm water pollution prevention plan. The goal of this plan is to prevent storm water pollution and to reduce the pollution that it cannot prevent to the BAT/BCT performance standard. The goal is accomplished by implementing various Best Management Practices (BMPs).

On October 28, 2002, the City of Murrieta issued a "Correction Notice" to Ryland Homes for failing to install slope protection after grading was completed. See *Exhibit 9, City of Murrieta Correction Notice, October 28, 2002*. On December 17, 2002, Jay Kalan, City of Murrieta, noted and verbally informed Ryland Homes' Superintendent Bob Williams of the inadequacy of BMPs and the lack of BMPs in other places. See *Exhibit 10, City of Murrieta Inspector's Log, December 17, 2002*. On January 2, 2003, Jay Kalan, City of Murrieta, noted that the site "needs NPDES BMPs." See *Exhibit 11, City of Murrieta Inspector's Log, January 2, 2003*.

On January 9, 2003, Jay Kalan, City of Murrieta, noted that the "NPDES [BMPs] needs maintenance." See *Exhibit 12, City of Murrieta Inspector's Log, January 9, 2003*. On January 17, 2003, Jay Kalan, City of Murrieta issued a "Correction Notice" to Ryland Homes noting "Noncompliance with NPDES. Have given several verbal warnings with no result." See *Exhibit 13, City of Murrieta Correction Notice, January 17, 2003*. On February 11, 2003, Jay Kalan, City of Murrieta documented through photographs slope erosion at the Serenada site, and the lack of site

perimeter BMPs, the failure to maintain gravel bags, and the failure to implement sediment control BMPs. The failure to implement adequate BMPs resulted in the discharge of sediment from the Serenada site. See *Exhibit 5, City of Murrieta Inspector's Log, February 11, 2003*; see *Exhibit 6, Digital photographs taken by Jay Kalan on February 11, 2003 labeled MVC-023S.JPG and MVC-024S.JPG*, and see *Exhibit 14, Digital photographs taken by Jay Kalan on February 11, 2003 labeled MVC-025S.JPG, MVC-027S.JPG through MVC-029S.JPG*.

On February 13, 2003, Deborah Woodward and Megan Fisher, Regional Board documented slope erosion at the Serenada site, and the lack of site perimeter BMPs, and the failure to implement sediment control BMPs. The failure to implement adequate BMPs resulted in the discharge of sediment from the Serenada site. See *Exhibit 7, Regional Board Inspection Report with photographs, February 13, 2003*. On February 14, 2003, Jay Kalan, City of Murrieta, issued a "Correction Notice" to Ryland Homes for failing to maintain NPDES BMPs since the previous storm event and failing to have adequate on-site replacement BMPs. See *Exhibit 15, City of Murrieta Inspector's Log, February 14, 2003*. On February 21, 2003, Jay Kalan, City of Murrieta, noted extensive slope erosion and v-ditches full of debris. See *Exhibit 16, City of Murrieta Inspector's Log, February 21, 2003*.

February 28, 2003 through April 15, 2003 (47 days of violation)

The Regional Board documented the sitewide inadequacy of BMPs numerous times with relatively few days in between such that the Regional Board alleges that the site had inadequate BMPs over the entire period from February 28 through April 15, 2003. See *Exhibit 17, Regional Board Memorandum, June 4, 2003*.

On February 28, 2003, Eric Becker, Regional Board documented the failure to protect storm drain inlets, the failure to repair eroded slopes, and the failure to maintain BMPs. The failure to properly implement BMPs at the site by Ryland Homes resulted in the discharge of sediment laden water to the City of Murrieta's storm water conveyance system. See *Exhibit 8, Regional Board Inspection Report with photographs, February 28, 2003*. On March 7, 2003, Jay Kalan, City of Murrieta informed Ryland Homes' Superintendent Bob Williams, of noncompliance with NPDES BMPs. See *Exhibit 18, City of Murrieta Inspector's Log, March 7, 2003*. On March 11, 2003, Jay Kalan, City of Murrieta noted that there has been "[n]o activity to comply with NPDES noncompliance." See *Exhibit 19, City of Murrieta Inspector's Log, March 11, 2003*.

On March 12, 2003, Jay Kalan, City of Murrieta noted “Ryland [Homes] has had no NPDES maintenance performed.” See *Exhibit 20, City of Murrieta Inspector’s Log, March 12, 2003*. On March 14, 2003, Jay Kalan, City of Murrieta, issued a “Correction Notice” to Ryland Homes for “[n]on compliance with NPDES.” See *Exhibit 21, City of Murrieta Correction Notice, March 14, 2003*. On March 17, 2003, Jay Kalan, City of Murrieta, issued a “Correction Notice” to Ryland Homes because “NPDES was insufficient and not properly placed to prevent sediment from entering storm drains.” See *Exhibit 22, City of Murrieta Correction Notice, March 17, 2003*.

On March 20, 2003, Eric Becker, Regional Board observed unrepaired slopes and the failure to implement additional erosion control BMPs on these highly erosive slopes. Soil stockpiles adjacent to the street gutters continue to be left exposed. Poor maintenance of BMPs was observed throughout the site, specifically failure to remove sediment from v-ditches and near storm drain inlets. See *Exhibit 23, Regional Board Inspection Report, March 20, 2003*. On April 15, 2003, Eric Becker and Frank Melbourn, Regional Board observed the lack of erosion control BMPs on the steep slopes along Jackson Avenue. The failure to protect these slopes appears to have resulted in a discharge of sediment from the site. Since the Regional Board inspectors were not on site during the weekend when the storm event occurred to observe firsthand the discharge of sediment, the Regional Board did not allege the discharge in the Complaint. See *Exhibit 24, Regional Board Inspection Report, April 15, 2003*.

4.2.2. Discharge’s Susceptibility to Cleanup and Abatement, and Degree of Toxicity

Not applicable.

4.2.3. Discharger’s Ability to Pay, and Effect on Business to Continue

See section 4.1.3.

4.2.4. Degree of Culpability and Voluntary Cleanup Efforts

See section 4.1.4.

4.2.5. Prior History of Violations

The Regional Board documented inadequate BMPs at the Ryland Homes’ Highpointe development on December 29, 2000 and March 5, 2001. The December inspection report noted the lack of erosion and sediment control BMPs around the perimeter of the site, the overall lack of good housekeeping practices, and the failure to maintain storm drain BMPs. The March inspection report noted overall a lack of sediment and erosion control BMPs, and a lack of construction entrance/exit BMPs.

Furthermore the report noted a continued problem with perimeter BMPs and good housekeeping practices. The Highpointe development is less than two miles from the Serenada site. The Regional Board issued a NOV to Ryland Homes on March 8, 2003 for failing to file a NOI, failing to implement/maintain BMPs, failing to implement its SWPPP, and failing to prohibit illicit/illegal discharges.

On November 1, 2002, Eric Becker, Regional Board observed the inadequacy of BMPs at Ryland Homes' Belleza development in San Marcos: Slopes lacked erosion control BMPs, soil stockpiles were not covered, inadequate protection of storm drain inlets, and a general lack of good housekeeping practices. A NOV was issued to Ryland Homes on November 7, 2002 for failing to file a NOI, failing to implement BMPs, and failing to prohibit illicit/illegal discharges. A followup inspection by the Regional Board on November 13, 2002 revealed that the slopes remained unprotected. The City of San Marcos issued a "Correction Notice" to Ryland Homes on February 25, 2003 for failing to reduce pollutants in storm water. The "Correction Notice" required Ryland Homes to "have slopes re-tract and sprayed."

4.2.6. Economic Benefit or Savings

See section 4.1.6.

4.2.7. Other Matters That Justice May Require

See section 4.1.7.

4.3. Failure to File Notice of Intent

Ryland Homes failed to file a Notice of Intent (NOI) for coverage under California State Water Resources Control Board (State Board) Order No. 99-08-DWQ, prior to the commencement of construction activity as required by CWC section 13376, Order No. 99-08-DWQ section C.1, and 40 Code of Federal Regulations Parts 122, 123, and 124.

4.3.1. Nature, Circumstances, Extent, and Gravity of the Violation

California Water Code (CWC) section 13376 requires "any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state...shall file a report of the discharge in compliance with the procedures set forth in Section 13260,..." For construction activity, this is accomplished by filing a Construction Storm Water Permit Notice of Intent (NOI). Section C.1. of the Construction Storm Water Permit's waste discharge requirements states that "[a]ll dischargers shall file an NOI and pay the appropriate fee for construction activities conducted at each site as required by Attachment 2: Notice of Intent – General

Instructions.” The Construction Storm Water Permit’s “General Instructions” state that “[d]ischarges of storm water associated with construction that results in the disturbance of one acre or more of land must apply for coverage under the General Construction Activities Storm Water Permit (General Permit).” Notice of Intents are required for each project. Once a project is sold to another party, the old NOI is void and the new owner must independently submit a NOI to obtain the NPDES Construction Storm Water Permit.

The State Board received a NOI from Ryland Homes for the Serenada site (WDID No. 9 33S320505) on March 11, 2003. *See Exhibit No. 1, NOI.* According to the Ryland Homes NOI, construction activity began on September 1, 2002. Resulting in 191 days of violation from September 1, 2002 until March 11, 2003. The trust deed transferring ownership of the Serenada site from Ashbrook Development Co. Inc. to Ryland Homes was recorded on September 3, 2002. To further substantiate Ryland Homes initiation of grading, note in the City of Murrieta’s Correction Notice of October 28, 2002, the statement that all “grading areas completed.” *See Exhibit No. 9, City of Murrieta Correction Notice, October 28, 2002.*

In response to citizen concerns over storm water pollution, the state legislature adopted the Storm Water Enforcement Act of 1998. The legislature found the following: “(a) Unregulated storm water runoff is a leading cause of contamination of the state’s surface water and groundwater. (b) Noncompliance with existing federal and state storm water regulations hinders the state’s ability to attain its water quality objectives.” The Act requires Regional Boards to undertake reasonable efforts to identify dischargers of storm water that have not obtained coverage under an appropriate storm water NPDES permit. This enforcement action is a step toward completing the legislature’s intent.

4.3.2. Discharge’s Susceptibility to Cleanup and Abatement, and Degree of Toxicity

Not applicable.

4.3.3. Discharger’s Ability to Pay, and Effect on Business to Continue

See section 4.1.3.

4.3.4. Degree of Culpability and Voluntary Cleanup Efforts

See section 4.1.4.

4.3.5. Prior History of Violations

Ryland Homes failed to timely file NOIs at two other sites in the San Diego Region over the last three years. Ryland Homes’ failed to file a

NOI for the Highpointe development until after receiving a NOV from the Regional Board. The NOI was 532 days late. Ryland Homes failed to file a NOI for the Belleza site until after the Regional Board issued a NOV. The NOI was at least 32 days late. The Regional Board is unsure when construction was commenced on the Belleza site because Ryland Homes failed to provide that information on their NOI.

4.3.6. Economic Benefit or Savings

Ryland Homes delayed paying the \$700 application fee due with the NOI for 191 days. Furthermore, the discharger is required to be in compliance with the permit at the time construction activity begins (i.e., develop and implement its SWPPP). The Regional Board has not received Ryland Homes' SWPPP and the Regional Board documented the lack of and inadequacy of BMPs at the site. Therefore, Ryland Homes also benefited by failing to adequately develop and implement its SWPPP.

4.3.7. Other Matters That Justice May Require

See section 4.1.7.

4.4. Failure to Submit Adequate Technical Report

Under CWC section 13267, the Regional Board pursuant to an investigation "may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region...shall furnish, under penalty of perjury, technical or monitoring program reports...." The Regional Board has similar authority under CWC section 13383 to require a report submittal for pollutant discharges to navigable waters. As of the writing of this technical report, no report has been submitted by Ryland Homes.

4.4.1. Nature, Circumstances, Extent, and Gravity of the Violation

The foundation of the State's regulatory program relies on dischargers to accurately and honestly report information required by the Regional Board. Failure to submit requested information erodes the State's regulatory program and places the health of the public and the environment at risk. The Regional Board considers a report to be received, if the report is timely submitted and adequately provides the information requested. Therefore, a timely submitted report that fails to adequately cover all of the requested information is not considered received.

On February 28, 2003, the Regional Board inspected the Serenada site and noted a discharge of sediment due to improper BMP practices, and a failure to implement and maintain BMPs. The Regional Board inspector further noted that a NOI had not been filed for the site. To better determine Ryland Homes' compliance at the site with the Construction

Storm Water Permit, the Regional Board on March 11, 2003 required the submittal of a water quality investigation report pursuant to CWC sections 13267 and 13383. The report was required to be received by March 28, 2003. The technical report was to include a copy of the filed NOI, a description of BMPs to prevent future sediment discharges, evidence that all graded areas have been addressed by erosion control BMPs, and a copy of the SWPPP prepared for the site. Ryland Homes submitted a report on March 26, 2003. Upon review, the Regional Board determined that the report was inadequate. Ryland Homes was informed of their failure to submit an adequate technical report on April 8, 2003 in a Regional Board NOV, and via telephone by Eric Becker, Regional Board on or about April 4, 2003. The April 8, 2003 NOV informed Ryland Homes that failure to submit the technical report could result in the assessment of administrative civil liability. The Regional Board has not received an adequate technical report and the violation continues.

4.4.2. Discharge's Susceptibility to Cleanup and Abatement, and Degree of Toxicity

Not applicable.

4.4.3. Discharger's Ability to Pay, and Effect on Business to Continue

See section 4.1.3.

4.4.4. Degree of Culpability and Voluntary Cleanup Efforts

The Regional Board has given Ryland Homes multiple notices that they have not submitted an adequate technical report and yet it has not submitted an adequate technical report. Ryland Homes is a sophisticated developer that is capable of producing the required information or hiring an engineering firm to produce the report for it. The failure to submit an adequate technical report reflects either intentional conduct or at the very least consistently negligent conduct, indicating a large degree of culpability.

4.4.5. Prior History of Violations

Ryland Homes failed to submit an adequate technical report on March 23, 2001 and November 27, 2002 as required by CWC sections 13267 and 13383 for the Highpointe and Belleza developments. The Ryland Homes' submittal was inadequate in both cases because it failed to sign the required perjury statement.

4.4.6. Economic Benefit or Savings

It is estimated that Ryland Homes saved between \$2,000 (if the report was done internally) to \$5,000 (if the report was produced by an engineering firm) by not submitting the technical report.

4.4.7. Other Matters That Justice May Require

See section 4.1.7.

5. Maximum Civil Liability Amount

Pursuant to CWC section 13385 the maximum civil liability that the Regional Board may assess is (a) ten thousand dollars (\$10,000) per day of violation (per violation); and (b) ten dollars (\$10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up. Section 13385(e) requires that, when pursuing civil liability under CWC section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation."

5.1. Discharge of Sediment to a MS4 and Waters of the Nation

Sediment was discharged from the Serenada site to Murrieta Creek via the City of Murrieta's MS4 on at least four days: January 28, 2003, February 11, 2003, February 13, 2003, and February 28, 2003. Therefore the maximum liability that the Regional Board may assess is \$40,000.

5.2. Failure to Implement Storm Water Pollution Prevention Plan

Ryland Homes failed to implement its SWPPP by failing to implement and or maintain adequate BMPs in violation of Order No. 99-08-DWQ section C.2 on at least 68 days. Therefore the maximum liability that the Regional Board may assess is \$680,000.

5.3. Failure to File Notice of Intent

Ryland Homes began construction activity at the Serenada site on September 1, 2002 and filed for coverage under Order No. 99-08-DWQ on March 11, 2003, 191 days late. Therefore the maximum liability that the Regional Board may assess is \$1,910,000.

5.4. Failure to Submit Adequate Technical Report

Ryland Homes failed to submit an adequate technical report on March 28, 2003 as required by the Regional Board pursuant to CWC sections 13267 and 13383, as of this date the technical report is 68 days late and counting. Therefore the maximum liability that the Regional Board may assess is \$680,000.

The total maximum liability that could be imposed by the Regional Board for these violations is \$3,310,000.

6. Proposed Civil Liability Per Violation

The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors listed in CWC section 13385, as well as the maximum civil liability that the Regional Board may assess.

6.1. Discharge of Sediment to a MS4 and Waters of the Nation

The proposed liability is \$10,000 per day for 4 days of violation resulting in a liability of \$40,000.

6.2. Failure to Implement Storm Water Pollution Prevention Plan

The proposed liability is \$1,500 per day for 68 days of violation resulting in a liability of \$102,000.

6.3. Failure to File Notice of Intent

The proposed liability is \$50 per day for 191 days of violation resulting in a liability of \$9,550.

6.4. Failure to Submit Adequate Technical Report

The proposed liability is \$100 per day for 68 days of violation resulting in a liability of \$6,800.

7. Total Proposed Administrative Civil Liability

The total proposed civil liability in this matter is \$158,350.